begin, but was the direct result of the servant's negligence in not turning off the petrol tap. All judges concur. The statute exempted from liability any one "on whose estate any fire shall accidentally begin." In *Vaughan* v. *Menlove* (1837), 3 Bing. N. C. 468, it seems to have been taken for granted, and in the *Filliter* case above, in 1847, it was decided that "accidentally" did not include *negligently,* and so left one liable, if a fire shall negligently begin on one's premises. It was then urged that the statute applied only to accidental *origin* of the fire (e. g.—lightning) and would not relieve from liability for the accidental escape of a fire not accidentally originating. For instance, if the owner lighted a lamp, and it then accidentally exploded, and burned his property and his neighbor's, the owner would be liable. Mr. Salmond, TORTS, 4th Ed. 247, thinks otherwise. He also thinks there is no sufficient authority for saying that at common law there was any liability for the escape of fire without negligence was shown. Still further he also thinks there is no liability for negligently failing to prevent the escape of a fire started on one's premises by a stranger. The case above does not seem to have cleared up this matter to any great extent, and apparently unnecessarily brings in *Rylands* v. *Fletcher,* to support a liability for a fire due to the negligence of defendant's servant.

FISHING.—VIOLATION OF STATUTE AGAINST PURSE SEINING.—In a prosecution for violation of a statute prohibiting fishing for salmon with a purse seine east of a certain line in the Columbia river, the facts were stipulated to be as follows: defendant was fishing with a purse seine outside forbidden portion of the river when the tide carried his net towards such line; before reaching same he closed his net completely, and allowed it to drift into the forbidden area with the fish in it; when about 100 yards inside said line he pulled the seine on to his boat and removed the fish. Parties further stipulated that, in such fishing, the act of removing the net from the water and emptying same is a necessary part of the fishing operation; also that no fish were caught in the seine inside said line. *Held*: since such act was a necessary part of the fishing operation, defendant was guilty of a violation of the statute. *State* v. *Marco,* (Ore., 1919), 183 Pac. 653.

The court quotes extensively from, and largely bases its decision on, the case of *"The Gerring"* v. *Queen, 27* Canada Sup. Rep. 271. In that case, by treaty, the United States had renounced the right to "take, dry, or cure fish" within three miles of the coast of British possessions in America. The "Gerring," a U. S. fishing vessel, had been fishing outside the three-mile limit, had pulled in its seine, and "pursed" same, attaching it to the boat, and the crew was engaged in bailing out the fish. While so engaged, the vessel drifted within the three-mile limit and was seized. By a 3-2 vote the Canadian court condemned the vessel as having been fishing in violation of the treaty and Canadian law. While the majority of the court in that case did decide that such acts were "fishing," and a violation of the treaty, the decision of condemnation appears to have been influenced by certain other circumstances. The words of the treaty—"take, dry or cure fish"—were interpreted as intended to embrace all the intermediate acts (as the bailing here) between the

taking itself and the preparing for human consumption; also the treaty provided that foreign fishing vessels might enter into the territorial waters for wood, water, shelter or repairs, and for no other purpose; so, on this ground, even the entry itself may have been sufficient to decide the question; further, the court seemed to have been influenced by the fact that this kind of fishing was considered contrary to public policy, as tending to annihilate the fish-food supply, and hesitated to give immunity to the vessel under these circumstances. On the above-mentioned grounds it seems that this case may be distinguished from the case at hand. Probably the Oregon court based its decision on the stipulation of the parties that the act of removing the seine from the water was a necessary part of the fishing operation,—otherwise it is difficult to see on what grounds the case should be sustained; and it may be noted that this court, also, was influenced by the fact that this kind of fishing is looked upon with disfavor. These courts lay some stress upon the fact that, until the fish are actually in the boat, there is still a chance of escape and that therefore the operation of fishing is not complete; granting this, certainly in these two cases no more fish could enter the net, and that would seem to be the true prohibition of such a statute against fishing. The fish are undoubtedly reduced to possession and ownership when completely enclosed in the net—*State* v. *Shaw*, 67 Ohio St. 157, 60 L. R. A. 481,—and it would seem that, for ordinary purposes, the act of fishing should then be considered as complete, and certainly so as against a statute such as the one here, the purpose of which would seem merely to be to prevent the catching of fish out of the waters in question.

INJUNCTION—CRIMINAL PROCEEDINGS—Where a United States attorney was sought to be restrained by injunction from instituting criminal proceedings under the War-Time Prohibition Act, upon the ground that he had transcended his authority through misconstruction of it. *Held,* That he cannot be so enjoined. *Hoffman Brewing Co.* v. *M'Elligott* (C. C. A. 2d Circ., 1919), 259 Fed. 525.

In America the rule that a criminal prosecution will be enjoined where it is based on an unconstitutional statute and property rights are threatened with irreparable injury, is firmly established. *Debbins* v. *Los Angeles,* 49 L. Ed. 169. Ward, J., in the principal case recognizes and endorses this rule, but will not allow an extension of judicial power as sought by the petitioner here, saying that such an extension would result in an injury to our system of jurisprudence far more serious than could be counterbalanced by the equity effected. In support of his position he quotes *Arbuckle* v. *Blackburn,* 113 Fed. 616, 65 L.R.A. 864, "that for equity to entertain a bill in this aspect would be to subvert the administration of the criminal law, and deny the right of trial by jury, by substituting a court of equity to inquire into the commission of offenses where it would have no power to punish the parties if found guilty, an enlargement of jurisdiction opposed to reason and authority." Upon this reasoning, Hough, J., in the principal case, disagrees with Ward, J., saying that the matter is one of degree, not of kind or power, and questions the distinction between unlawful acts of a prosecutor done under color of